

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA F. LARSON and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Groveland, Calif.

*Docket No. 97-2705; Submitted on the Record;
Issued June 23, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation effective September 3, 1997 on the grounds that her employment injury residuals did not prevent her from returning to her date-of-injury position.

On September 5, 1987 appellant, then a 56-year-old forestry technician, filed a notice of traumatic injury and claim, alleging that she sustained an ankle sprain while in the performance of duty. She did not stop work. The Office accepted appellant's claim for bilateral ankle sprain. Subsequently, the Office accepted that appellant sustained a bruised left knee, a twisted left ankle and myofascial spasms of the cervical, thoracic and lumbar spine that were causally related to her accepted September 5, 1987 injury. Appellant stopped work on April 10, 1988 and did not return. She received appropriate compensation for all periods of disability until January 3, 1995 when she elected optional retirement and received a buy-out from the employing establishment in the amount of \$20,517.60. On July 26, 1996 appellant was again eligible for receipt of compensation for temporary total disability and was placed on the periodic rolls.

In a letter dated July 24, 1996, the Office advised appellant that it proposed termination of her monetary compensation on the grounds that she could perform her date-of-injury position despite residuals of her accepted employment injury. By decision dated September 3, 1996, the Office terminated appellant's wage-loss compensation benefits.

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly terminated appellant's wage-loss compensation benefits.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The term "disability" as used under the Act means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of injury.⁴ The general test for determining loss of wage-earning capacity is whether an injury-related impairment prevents the employee from performing the kind of work he was doing when injured.⁵

In the present case, the Office terminated appellant's wage-loss compensation based on the report of Dr. Wesley Kinzie, a Board-certified orthopedic surgeon and Office referral physician, and the concurrence of Dr. Robert E. Caton, appellant's treating physician. In a report dated December 28, 1995, Dr. Kinzie noted appellant's history of injury and accepted conditions and indicated that the only residual condition related to her employment injury was instability of the ankles. He also reported that appellant had degeneration of the thoracic and lumbar spines which was due to natural progression and was disabling only on a subjective basis. Based on the position description provided in the statement of accepted facts, Dr. Kinzie concluded that appellant could perform all of the duties of a forestry technician, which was a semi-sedentary position. In a report dated May 16, 1996, Dr. Caton noted that he had reviewed the report of Dr. Kinzie and agreed that appellant could return to her preinjury job as she was on simple conservative treatment. Therefore, as the physicians of record concluded that appellant could return to her date-of-injury position without restriction, appellant is no longer disabled within the meaning of the Act and is not entitled to further wage-loss compensation. The Office met its burden of proof in terminating appellant's monetary compensation effective September 3, 1996.

¹ 5 U.S.C. §§ 8101-8193.

² *William Kandel*, 43 ECAB 1011 (1992).

³ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁴ *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁵ *See Gary L. Loser*, 38 ECAB 673 (1987).

The decision of the Office of Workers' Compensation Programs dated September 3, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 23, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member